

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN D. OGDEN and U.S. POSTAL SERVICE,
ELGIN POST OFFICE, Elgin, IL

*Docket No. 99-619; Submitted on the Record;
Issued August 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on January 25, 1998 causally related to his March 6, 1996 employment injury.

On March 8, 1996 appellant, then a 49-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 1996 he sustained an injury in the form of torn ligaments in his right knee. Appellant noted that his right knee injury was sustained when he slipped and fell on an icy sidewalk while working his delivery route. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on March 6, 1996 at the Sherman Hospital emergency room. Appellant stopped work on March 6 and resumed work on March 12, 1996.

In support of his claim, appellant submitted three duty status reports dated March 12 to April 1, 1996 by Dr. Ronald J. Winters, a family practitioner. On the form dated March 12, 1996, Dr. Winters noted that appellant's right knee was severely swollen and he diagnosed a strained knee. He advised appellant to resume work on March 11, 1996 and restricted appellant to working eight-hour shifts. Dr. Winters also restricted appellant from standing, walking, climbing, kneeling, bending/stooping, twisting, pulling/pushing, driving a vehicle, and lifting 5 pounds continuously and 10 pounds intermittently. In his March 25, 1996 report, he diagnosed MCL and LCL strains, restricted appellant from climbing and kneeling and restricted appellant to intermittent standing, walking, bending/stooping, twisting, pulling/pushing, reaching above shoulder and vehicle operation. In his April 1, 1996 report, Dr. Winters noted that appellant was able to perform regular work without restrictions.

In further support of his claim, appellant submitted unsigned progress notes from Dr. Winters dated March 8 through April 1, 1996. In his March 8, 1996 notes, he stated that appellant sustained a severe contusion and sprain of the right knee and that the right knee was very swollen and tender with "joint effusion and a ballotable patella." Dr. Winters noted that he

advised appellant to take Motrin 800 three times daily and to apply heat to his knee. In his March 12, 1996 notes, Dr. Winters noted “considerable fluid” and swelling and tenderness in the MCL area. He further noted that the “lateral side” was not as swollen and the joint effusion was reduced by 50 percent since his previous examination of appellant. In Dr. Winters March 25, 1996 notes, he noted continued soreness and stiffness. Dr. Winters also noted that the swelling was down 50 percent and that appellant was able to bend his right knee. In his April 1, 1996 notes, he stated that appellant had “done well” and that he would resume his normal delivery route. Dr. Winters noted that appellant’s knee was swollen, but that the ligament support was good and the tenderness had decreased. He stated that he would release appellant to full duty status effective April 2, 1996.

Appellant also submitted a disability certificate dated March 8, 1996 signed by Dr. Winters. On the certificate he noted that appellant was under his care from March 8 through 13, 1996. Appellant also submitted a medical assessment for limited-duty job assignment form, dated March 25, 1996, from Dr. Winters. On the form, he noted that appellant was capable of left and right hand work, seated work and reaching above his left and right shoulders. Dr. Winters indicated that appellant was not capable of bending twisting, turning, or lifting over 10 pounds.

On March 14, 1996 the employing establishment filed a report of termination of disability and/or payment (Form CA-3). On the form, appellant’s supervisor noted that appellant’s work assignment was changed to sedentary work.

The Office of Workers’ Compensation Programs administratively accepted appellant’s claim for a right knee injury sustained on March 6, 1996.

On March 9, 1998 appellant filed a claim for recurrence of disability (Form CA-2a). On the claim form, appellant alleged that since sustaining an injury to his right knee on March 6, 1996, he had experienced pain and swelling. He further alleged that his right knee pain increased due to a week of bed rest relating to a wrist injury sustained on January 21, 1998. Appellant noted that since the recurrence, Dr. David Morawski, an orthopedic surgeon, was his attending physician. On the supervisor’s report portion of the claim form, the customer service manager noted that appellant’s March 6, 1996 employment injury “did not occur at this location [Worth, Illinois District],” and that he was unfamiliar with the facts of that injury. He further noted that it was “not clear” how a recurrence of appellant’s right knee injury was caused by bed rest for an arm injury.

In support of his claim, appellant submitted unsigned progress notes from a physician with the initials of “DRM” dated February 18, 1998.¹ Dr. Morawski noted that appellant reported that his knee was “giving him a lot of trouble” since sustaining an injury about two years previously. He further noted that appellant described that injury as a tendon tear sustained during a slip and fall on ice while working his mail delivery route. Dr. Morawski stated that appellant reported weakness and difficulty rising from a sitting position and climbing stairs. He noted that appellant’s right knee was warm and swollen and had an “ill defined patellar tendon.”

¹ The Board infers that “DRM” are the initials for Dr. Morawski, appellant’s attending physician.

Dr. Morawski further noted that appellant was unable to fully extend his right knee against gravity, suggesting a possible chronic extensor mechanism injury. Based on his examination of appellant, he diagnosed probable chronic patellar tendinitis or possible rupture. Finally, Dr. Morawski stated, “[w]e need to get this settled whether or not this is related to his old injury or chronic other problem but he reports no other specific injuries to his knee.”

By letter dated September 23, 1998, the Office notified appellant that the evidence of file was insufficient to support his claim for a recurrence of disability. The Office requested additional factual and medical evidence from appellant and allowed him 30 days to respond to its request. Appellant did not respond to the Office’s request for additional information.

By decision dated November 23, 1998, the Office denied appellant’s claim for compensation benefits for a recurrence of disability on the grounds that the medical evidence failed to establish a causal relationship between his alleged recurrence and his March 6, 1996 employment-related right knee injury.

The Board finds that appellant failed to establish a causal relationship between his March 6, 1996 right knee injury and his alleged recurrence of disability sustained on January 25, 1998.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² Such proof must include medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant’s unsupported belief of causal relation.⁴

In the present case, the Office accepted appellant’s right knee condition sustained on March 6, 1996. Therefore, the remaining issue is whether appellant’s right knee condition sustained on or after January 25, 1998 is causally related to the March 6, 1996 employment injury.

The medical opinion evidence submitted to support appellant’s claim for a recurrence of disability does not establish a causal relationship between his alleged recurrence and his accepted employment injury sustained on March 6, 1996. The duty status reports by Dr. Winters, dated March 12, 25 and April 1, 1996, serve to show the restrictions placed upon appellant’s work activities, but they are not relevant to the question of whether appellant’s alleged recurrence of disability is causally related to his April 6, 1996 right knee injury, since the alleged recurrence occurred after the reports were written. Dr. Winters’ progress notes, dated

² *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

³ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

⁴ *See Id.*

March 8 to April 1, 1996, are similarly irrelevant as they were written prior to appellant's alleged recurrence of disability. Finally, the unsigned progress reports by Dr. Morawski, dated February 18, 1998, are of no probative medical value, as medical evidence considered by the Office must be written and signed by a qualified physician.⁵

The decision of the Office of Workers' Compensation Programs dated November 23, 1998 is affirmed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ *James A. Long*, 40 ECAB 538; *see also Walter A. Fundinger*, 37 ECAB 200, 204 (1985).